


CR 2007/105 - Income tax: early retirement scheme - State Library of Victoria

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Class Ruling

Income tax: early retirement scheme – State Library of Victoria

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:
- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - section 83-180 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless stated otherwise.

Class of entities

4. The class of entities to which this Ruling applies is those employees of the State Library of Victoria who receive a payment under the scheme described in paragraphs 15 to 33 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 33 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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9. A copy of this Ruling must be given to all employees eligible to participate in the early retirement scheme.

Date of effect

10. This Ruling applies from 14 November 2007 to 29 February 2008. However, the Ruling continues to apply after 29 February 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

11. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

12. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

15. The following description of the scheme is based on information provided by the applicant.

16. The State Library of Victoria is seeking approval for an early retirement scheme.

17. The scheme will be open to all ongoing employees of the State Library of Victoria excluding executive employees.

18. The operating environment of the State Library of Victoria is changing due to a shift to digital services and an expectation that these changes will reposition the Library's operating cost and service base to a more sustainable level.

19. In 2006, the State Library of Victoria launched a four year plan, the slv21 program, designed to transform the Library's service model to one based around digital information and access. The slv21 program has a strong focus on the use of technology and on delivering services online. This will enable the library to progressively achieve efficiencies in service delivery.

20. The level of government recurrent funding to the State Library of Victoria requires the Library to reposition its cost and services base to match the longer term availability of funding revenue.

21. As a result of the proposed changes in digital services, the State Library of Victoria recognises the need to restructure and re-skill its workforce to increasingly provide a broader range of services and digital content online while maintaining traditional means of face to face reference services on site.

22. The changes in technology and the repositioning of the State Library of Victoria's skill base will enable the organisation to reduce the overall staffing numbers thereby leading to service efficiency and cost reduction.

23. The changes will predominantly impact on employees in professional and para-professional roles. However, the other employees of the State Library Of Victoria in ancillary and support roles will also be affected.

24. The State Library of Victoria will limit the number of employees in each of the two groups above who can accept the offer of early retirement. Participation in the early retirement scheme will be on a first to accept basis for employees in both groups.

25. All employees who retire under the scheme will terminate employment and receive the payment on a date determined by the employer based on their operational requirements but no later than 29 February 2008.

26. The payments to be made under the scheme are as follows:

- 4 weeks pay in lieu of notice for all employees plus an extra week for those over 45 years of age;
- 2 weeks pay for each year of service up to a maximum of fifteen years (30 weeks pay); and
- a lump sum voluntary departure incentive of \$10,000.

Payments made under the scheme

27. For a payment made under the above mentioned scheme to qualify as an early retirement scheme payment, the conditions set out in paragraphs 28 to 33 of this Ruling must be met. Please note that any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

28. The payment must be received by an employee because of their retirement under an early retirement scheme. The early retirement scheme payment will be so much of the payment that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement.

29. The payment must not be a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

30. The payment must not be made in lieu of superannuation benefits.

31. Where the employee and the employer are not dealing with each other at arm's length (for example, because they are related in some way) the payment does not exceed what would have been paid to the taxpayer had they been dealing at arm's length.

32. The employee must retire before the earlier of:

- age 65; or

- the date on which the taxpayer's employment would have terminated under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service (as the case may be).

33. At the time of the retirement, there is no arrangement in force between the employee and the employer or the employer and another person, to employ the employee after the date of termination.

Ruling

34. The early retirement scheme to be implemented by the State Library of Victoria is an early retirement scheme for the purposes of section 83-180.

35. Accordingly, so much of the payment received by an employee as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement, will be an early retirement scheme payment in relation to the taxpayer.

36. In addition, so much of the payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Commissioner of Taxation

14 November 2007

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

37. Where a scheme satisfies the requirements of subsection 83-180(3) that scheme will be an 'early retirement scheme'.

38. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of the former section 27E of the *Income Tax Assessment Act 1936*, which section 83-180 replaced.

39. Subsection 83-180(3) states that:

A scheme is an **early retirement scheme** if:

- (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
- (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
- (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

These three conditions are discussed below.

All employees within a class approved by the Commissioner may participate in the scheme

40. In order to satisfy the first condition, the scheme must be offered to all employees in a class approved by the Commissioner under paragraph 83-180(3)(a).

41. The class of employees to whom early retirement will be offered is set out at paragraph 17 of this Ruling.

42. The Commissioner considers that this is an appropriate class of employees for the scheme to be offered to. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the employer. These employees meet the requirements of an approved class of employees for the purpose of paragraph 83-180(3)(a).

43. It is noted, however, that the State Library of Victoria retains a limited right of veto to be applied to the number of employees that can accept the offer of early retirement as set out in paragraph 24 of this Ruling. The limitation of the scheme in this way is acceptable to the Commissioner.

The employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations in a way approved by the Commissioner

44. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer as described in paragraph 83-180(3)(b).

45. Paragraphs 18 to 23 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. In approving the scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer. It is therefore considered that the scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the employer for the purpose of paragraph 83-180(3)(b).

The scheme must be approved by the Commissioner prior to its implementation

46. The scheme is proposed to operate from 14 November 2007 to 29 February 2008. Approval was granted prior to implementation, therefore, the third condition is satisfied.

47. The scheme will be in operation for approximately 4 months which is within the period recommended in TR 94/12.

Other relevant information

48. Under subsection 83-180(1), so much of the payment received by an employee, because the employee retires under an early retirement scheme, as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of termination is an early retirement scheme payment.

49. It should be noted that, in order for a payment to qualify as an early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 83-180(2), 83-180(5) and 83-180(6)):

- the retirement occurred before the employee turned age 65 or such earlier date on which the employee's employment would have terminated under the terms of employment because of the employee attaining a certain age or completing a particular period of service (as the case may be);

- if the employee and the employer are not dealing with each other at arm's length (for example, because they are related in some way), the payment does not exceed the amount that could reasonably be expected to be made if the retirement was made at arm's length;
- at the time of retirement there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement;
- the payment must not be made in lieu of superannuation benefits; and
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

50. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings'.

51. An early retirement scheme payment made on or after 1 July 2007 that falls within the specified limit is referred to as the 'tax-free' amount and will not be assessable income and will not be exempt income.

52. For the year ending 30 June 2008, the tax-free amount is limited to \$7,020 (base limit) plus \$3,511 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 26 of this Ruling may qualify as an early retirement scheme payment.

54. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 52 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

55. The 'tax-free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

56. Any payment in excess of this limit will be an employment termination payment and split up into tax free and taxable components. The tax free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

57. Employment termination payments cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

58. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/12

Subject references:

- early retirement scheme payment
- employment termination payment

- ITAA 1997 83-170
- ITAA 1997 83-180
- ITAA 1997 83-180(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)
- ITAA 1997 83-180(3)(a)
- ITAA 1997 83-180(3)(b)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Legislative references:

- ITAA 1936 27E
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
-

ATO references

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